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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.29405 of 2013

and

M.P.Nos.1 of 2013, 1 & 2 of 2015

The General Manager,  
Metropolitan Transport Corporation (Chennai) Ltd.,  
Pallavan Illam, Anna Salai,  
Chennai - 600 002.

... Petitioner

Vs.

1.The Special Deputy Commissioner of Labour,  
D.M.S. Compound,  
Chennai.

2.G.Kolappadhas (died)

3.Ajitha

4.K.A.Archana

5.K.A.Dhivya

... Respondents

[R3 to R5 substituted as LR's of deceased 2<sup>nd</sup> respondent  
vide order dated 11.03.2022 made in W.M.P.No.24114  
of 2021 in W.P.No.29405 of 2013]

Prayer : Writ Petition filed under Article 226 of the  
Constitution of India for issuance of a Writ of Certiorari to  
call for the records of the order passed by the 1<sup>st</sup> respondent  
in Approval Petition in A.P.No.189 of 2010 dated 27.12.2012  
and to quash the same as illegal.

For Petitioner : Mr.K.Murthi

For R1 : Mr.C.Selvaraj  
Additional Government Pleader

R2 : Died

For R3 to R5 : Mr.S.T.Varadarajulu



## O R D E R

This writ petition has been filed to quash the order of the 1<sup>st</sup> respondent in A.P.No.189 of 2010, dated 27.12.2012.

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2. Pending the writ petition, the 2<sup>nd</sup> respondent (employee) expired and his legal heirs have been substituted as parties.

3. On charges of unauthorised absence for the period from 14.03.2008, the deceased employee was subjected to domestic enquiry. Based on the Enquiry Officer's report that the charges were proved, the petitioner Management had dismissed the employee (deceased) from services, through an order dated 05.10.2010, and on the same day, they had filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947, seeking for approval of the action taken. The authority, through the impugned order dated 27.12.2012, rejected the petitioner's application on the ground that the procedure contemplated by the Hon'ble Supreme Court in the case of Lalla Ram v. DCM Chemical Works reported in AIR 1978 (C) 1004 was not followed and holding that the employee (deceased) was not paid with one month full wages; that there was no prima facie case before the Enquiry Officer; and that the enquiry was in violation of the principles of natural justice.

4. The petitioner Corporation, in the affidavit filed in support of the present writ petition, have raised a ground touching upon the factual aspects, which requires to be substantiated before the authority. As per the ground raised in the present writ petition, the petitioner claims that the onus to explain that the employee (deceased) had given a proper leave letter was on him and therefore, the order of the authority is incorrect.

5. Insofar as the enquiry notice is concerned, no specific ground has been raised to the effect that notice was properly served and that the copies of the summons were marked before the authority. The authority has specifically found in the impugned order that, though the summons were claimed to be issued to the employee (deceased) on 07.04.2009, 29.04.2009 and 27.05.2009, the same have not been marked in the proceedings. This apart, the authority has found that the employee (deceased), though had given a letter explaining the reason for his absence stating that he was ill and that he was admitted in the hospital from 21.07.2008 onwards, this aspect has not been considered by the petitioner Corporation and also since the enquiry notices were also not sent to him, there was no prima facie case before the Enquiry Officer.

6. This Court is in agreement with the reasoning adopted by the 1<sup>st</sup> respondent authority. The Hon'ble Supreme Court in Lalla Ram's case (supra) had found that the authority, exercising his powers under Section 33(2)(b) of the Act, would have the jurisdiction to inquire as to whether one month full



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wages was paid to the concerned workman at the time of dismissal; whether a prima facie case was available before the Enquiry Officer; and whether the enquiry was conducted in accordance with the principles of natural justice, among other stipulations.

7.It is in accordance with these procedures stipulated by the Hon'ble Supreme Court, the authority had also passed the present impugned order rejecting the action initiated by the petitioner Corporation by dismissing the employee (deceased) from services. I do not find any infirmity in the impugned order.

8.Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

9.In view of the dismissal, the legal heirs of the deceased employee shall be entitled for all the DCRG benefits, including Family Pension. The petitioner Corporation shall pass appropriate orders, for disbursement of the DCRG benefits including Family Pension, within a period of six weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mkN

To

1.The General Manager,  
Metropolitan Transport Corporation (Chennai) Ltd.,  
Pallavan Illam, Anna Salai,  
Chennai - 600 002.

2.The Special Deputy Commissioner of Labour,  
D.M.S. Compound,  
Chennai.

+1 cc to Mr.S.T.Varadarajulu, Advocate Sr.NO. 24978

+1 cc to Government Pleader Sr.NO. 25758

W.P.No.29405 of 2013

PM(CO)

A.SK(27/04/2022)